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101ST CONGRESS  
1ST SESSION

# H. R. 763

To amend title 5, United States Code, to establish certain restrictions relating to drug testing by Federal agencies, and for other purposes.

## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 2, 1989

Mr. ACKERMAN introduced the following bill; which was referred to the Committee on Post Office and Civil Service

## A BILL

To amend title 5, United States Code, to establish certain restrictions relating to drug testing by Federal agencies, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. RESTRICTIONS RELATING TO DRUG TESTING.**

4 (a) IN GENERAL.—Chapter 73 of title 5, United States  
5 Code, is amended by adding at the end the following:

6 **“SUBCHAPTER VI—RESTRICTIONS RELATING TO**  
7 **DRUG TESTING**

8 **“§ 7361. Definitions**

9 **“For the purpose of this subchapter—**

10 **“(1) the term ‘agency’ means—**

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- 1                   “(A) an Executive agency;  
2                   “(B) a military department;  
3                   “(C) a court of the United States;  
4                   “(D) the Administrative Office of the United  
5                   States Courts;  
6                   “(E) the Library of Congress;  
7                   “(F) the Botanic Garden; and  
8                   “(G) the Government Printing Office;  
9                   “(2) the term ‘employee’ means an individual em-  
10                  ployed in or under an agency;  
11                  “(3) the term ‘controlled substance’ has the mean-  
12                  ing given such term under section 102(6) of the Com-  
13                  prehensive Drug Abuse Prevention and Control Act of  
14                  1970;  
15                  “(4) the term ‘drug test’ means a test for detect-  
16                  ing the presence of a controlled substance, or any resi-  
17                  due or byproduct thereof, in the human body;  
18                  “(5) the term ‘action’ means a personnel action  
19                  under clauses (i) through (x) of section 2302(a)(2)(A);  
20                  and  
21                  “(6) the terms ‘labor organization’ and ‘collective  
22                  bargaining agreement’ each has the meaning given  
23                  such term under section 7103(a).  
24        **“§ 7362. Restrictions**  
25                  “(a) An agency may not—

1           “(1) request, require, or threaten to require that  
2           an applicant for employment submit to a drug test; or

3           “(2) take, or fail to take, any action with respect  
4           to an applicant for employment, based on, or otherwise  
5           taking into consideration—

6                   “(A) an offer to submit to a drug test; or

7                   “(B) the results of any drug test.

8           “(b)(1) Except as otherwise provided in this subsection,  
9           an agency may not—

10                   “(A) request, require, or threaten to require that  
11           an employee submit to a drug test; or

12                   “(B) take, or fail to take, any action with respect  
13           to an employee, based on, or otherwise taking into  
14           consideration—

15                   “(i) an offer to submit to a drug test; or

16                   “(ii) the results of any drug test.

17           “(2)(A) An agency may request or require that an em-  
18           ployee submit to a drug test if at least 2 individuals having  
19           supervisory or oversight authority with respect to such em-  
20           ployee concur that—

21                   “(i) the employee's performance is impaired; and

22                   “(ii) there is reason to believe that the impairment  
23           is due, in whole or in part, to the employee's then  
24           being under the influence of a controlled substance.

1       “(B) In the case of an employee who is subject to the  
2 supervisory or oversight authority of only 1 individual, the  
3 findings required under paragraph (1) to be made by at least  
4 2 individuals may instead be made by the supervising or  
5 overseeing individual alone.

6       “(3) An employee having a positive result in a drug test  
7 permitted under paragraph (2) may be requested or required  
8 to submit to a confirmatory drug test, the design and method-  
9 ology of which shall be consistent with the purpose of deter-  
10 mining the validity of the earlier result.

11       “(4) Nothing in this subsection shall prevent an agency  
12 from taking an action against, or failing to take an action on  
13 behalf of, an employee on the basis of a positive result in a  
14 drug test requested or required of such employee under para-  
15 graph (2), if—

16               “(A) the results of the employee’s drug test under  
17 paragraph (3) are also positive; or

18               “(B) the employee fails or refuses to submit to the  
19 drug test requested or required under paragraph (3).

20       “(c)(1) The Office of Personnel Management shall estab-  
21 lish general guidelines for carrying out this section, including  
22 guidelines relating to—

23               “(A) the acquisition, handling, control, and dispos-  
24 al of any samples;

1           “(B) the methodology and procedures to be used  
2           in the evaluation of any such samples;

3           “(C) the respective minimum levels of reliability  
4           required for initial and confirmatory drug tests;

5           “(D) the personnel who may be authorized to con-  
6           duct drug tests and the qualification requirements for  
7           any such personnel;

8           “(E) procedures for maintaining the security and  
9           confidentiality of any medical or other records; and

10          “(F) procedures for providing information to, and  
11          otherwise assisting, employees needing drug-rehabilita-  
12          tion services.

13          “(2) The head of each agency shall prescribe regulations  
14          under which this section shall be carried out with respect to  
15          such agency. Regulations prescribed under this paragraph  
16          shall be in accordance with the general guidelines established  
17          under paragraph (1).

18          “§ 7363. Remedies

19          “(a) Subject to subsection (b), any person aggrieved by a  
20          violation of section 7362 may bring a civil action against the  
21          United States for equitable or monetary relief, or both, in the  
22          district court of the United States for the district in which  
23          that person resides, for the District of Columbia, or, in the  
24          case of an employee or former employee, for the district in

1 which that person was employed at the time the cause of  
2 action arose.

3 “(b) A civil action under this section shall be forever  
4 barred unless commenced within 2 calendar years after the  
5 date on which the cause of action arose.

6 “(c) The court may award to a prevailing plaintiff in an  
7 action brought under this section costs of litigation and rea-  
8 sonable attorney’s fees.

9 “(d) The remedies provided by this section are in addi-  
10 tion to any other remedy available under law.

11 **“§ 7364. Collective bargaining**

12 “Notwithstanding any provision of section 7362, em-  
13 ployees within a unit with respect to which a labor organiza-  
14 tion is accorded exclusive recognition under chapter 71 shall  
15 not be subject to drug tests—

16 “(1) if, or to the extent that, the tests would vio-  
17 late a collective bargaining agreement between the  
18 agency and the labor organization; or

19 “(2) if drug tests are not covered by such a collec-  
20 tive bargaining agreement, unless or until there has  
21 been consultation or negotiation, as the case may be,  
22 in accordance with applicable provisions of law.

23 **“§ 7365. Exemptions**

24 This subchapter does not apply to—

1           “(1) the Central Intelligence Agency, in the case  
2           of any individual employed by, detailed to, or applying  
3           for a position in the Central Intelligence Agency; or

4           “(2) the National Security Agency, in the case of  
5           any individual employed by, detailed to, or applying for  
6           a position in the National Security Agency.”.

7           (b) CHAPTER ANALYSIS.—The analysis for chapter 73  
8           of title 5, United States Code, is amended by adding at the  
9           end the following:

“SUBCHAPTER VI—RESTRICTIONS RELATING TO DRUG TESTING

“Sec.

“7361. Definitions.

“7362. Restrictions.

“7363. Remedies.

“7364. Collective bargaining.

“7365. Exemptions.”.

10       SEC. 2. EFFECTIVE DATE.

11           This Act shall take effect sixty days after the date of the  
12           enactment of this Act.

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